it. This view seems to be supported by the weight of authority;[12] and besides giving to the word "required" its natural meaning, it carries out the apparent purpose of the amendment to change the rule of the earlier cases.

Conceding the recording to be "required," it remains to be decided whether the statutory elements are to be determined as of the date of execution or of record. Since the amendment leaves the definition of a preference intact except as to the time requirement, it would seem that its effect should be merely to extend the time limitation, leaving the elements still to be considered as of the date of execution.[13] Many decisions, however, carry out the spirit of the amendment to its full extent by dating intent, reasonable cause and insolvency from the time of recording.[14] The amendment of June 25, 1910 is apparently intended to settle the law in favor of the latter view.[15]

STATE REGULATION OF REDUCED RATE RAILROAD TICKETS.—It is well settled that state railroad commissions may fix reasonable rates for intrastate transportation and control the incidents of the service.[1] Since discrimination between shippers is a familiar cause of industrial monopoly, it is to the public interest to have unvarying freight rates prescribed by the State.[2] But, obviously, the same rule of policy does not apply to passenger rates; consequently, commutation, mileage, and other desirable forms of cut-rate transportation, are exempt from the ban on discrimination.[3] The nature of this exemption has been the subject of much controversy. The Supreme Court has held that railroads cannot be compelled to issue cut-rate tickets, on the ground that since the maximum charge must, of course, be reasonable, any lower charge is less than reasonable in legal contemplation, and its enforcement becomes a taking of property without compensation.[4] The fallacy

[12] *In re* Beckhaus (C. C. A. 7th Cir. 1910) 177 Fed. 141; Loeser *v.* Savings Dep. Co. (C. C. A. 6th Cir. 1906) 148 Fed. 975; See English *v.* Ross (D. C. M. D. Pa. 1905) 140 Fed. 630; Ragan *v.* Donovan (D. C. N. D. Oh. 1911) 189 Fed. 138; Mattley *v.* Geisler (C. C. A. 8th Cir. 1911) 187 Fed. 970; Dulany *v.* Morse (1913) 39 App. Cas. (D. C.) 523.

[13] *In re* Klein, *supra;* Debus *v.* Yates (D. C. E. D. Ky. 1910) 193 Fed. 427; see *In re* Jackson Co. (D. C. D. Mo. 1911) 189 Fed. 636; *In re* Sayed, *supra;* Claridge *v.* Evans (1908) 137 Wis. 218.

[14] First Nat. Bank *v.* Connett (C. C. A. 8th Cir. 1905) 142 Fed. 33; English *v.* Ross, *supra; In re* Montague (D. C. E. D. Va. 1905) 143 Fed. 428.

[15] See *In re* Klein, *supra,* p. 250; but see *In re* Watson (D. C. E. D. Ky. 1912) 201 Fed. 962.

[1] Railroad Commission Cases (1886) 116 U. S. 307.

[2] 2 Wyman, Public Service Corporations, § 1290.

[3] Congress provides that nothing in the Interstate Commerce Act "shall prevent * * * the issuance of mileage, excursion, or commutation passenger tickets." 25 U. S. Stat. at L. 862. Since the States have not enacted similar clauses, their attitude is implied to be in line with that of Congress, because they grant their commissions the widest power over freight transportation and only limited power over passenger traffic. Georgia Code (1911) §§ 2634, 2664.

[4] Lake Shore & M. S. Ry. *v.* Smith (1899) 173 U. S. 684, 696.

of the argument that because there is only one possible maximum rate, there may also be only one possible reasonable rate, lies in the fact that there are as many reasonable rates as there are kinds of service rendered. At all events, it is clear that railroads are free to issue cut-rate tickets or not, as they desire.[5]

Driven from their first position, the commissions have next endeavored to regulate the incidents of reduced rate contracts of carriage,[6] asserting that the voluntary act of the carrier in issuing special tickets opens the way for state regulation.[7] In this they have been upheld by the Georgia Supreme Court in the case of *Railroad Commission* v. *Louisville & Nashville R. R.* (Ga. 1913) 80 S. E. 327, which involved the validity of an order requiring railroads issuing mileage books to accept them on trains as ordinary tickets, except when the journey was commenced in a city of over 10,000 inhabitants. The previous practice, based on the printed contract, had been for the holder to exchange the coupons for a regular ticket before boarding the train. Although the reasonableness of this arrangement was unquestioned,[8] it was held, one judge dissenting, that the new order, being also reasonable and emanating from the commission, should prevail as a proper exercise of the police power for the public convenience.[9]

This decision flatly violates the spirit of the case of *Lake Shore & M. S. Ry.* v. *Smith*,[10] which is controlling for state courts on the particular question of mileage book rates. The Supreme Court there says, that, within the maximum requirements, a carrier "is at liberty to conduct its work in such a manner as may seem to it best * * * ."[11] This liberty is, of course, at all times subject to the laws against discrimination and the common law test of reasonableness. To curb it

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[5] 2 Wyman, Public Service Corporations, § 1353. In Attorney-General *v.* Old Colony R. R. (1893) 160 Mass. 62, the court declared invalid a law requiring the issuance of mileage books interchangeable among all the railroads of the State because it provided no adequate security for the redemption of coupons. Free passes, on the other hand, are frequently forbidden. 34 U. S. Stat. at L. 584.

[6] The South Carolina commission has taken a position similar to that of Georgia.

[7] *Cf.* Stephens *v.* Central of Ga. Ry. (1912) 138 Ga. 625, in which the point was stressed that the voluntary act of the carrier in initiating the special service brought the regulation of that service within the scope of the commission's powers.

[8] The form of contract described has been customary in Georgia for some time, and was specifically approved by the commission in 1908. See Perry *v.* Atlantic Coast Line R. R. (1911) 9 Ga. App. 260.

[9] The court cited Lake Shore & M. S. Ry. *v.* Ohio (1899) 173 U. S. 285, 300, which said: "The power of the State * * * to provide for the public convenience stands upon the same ground precisely as its power * * * to protect the public health, the public morals, or the public safety."

[10] *Supra*, p. 691.

[11] It is interesting to note that the Interstate Commerce Commission has expressed its inability to alter the reasonable limitations as to service which the railroad imposes upon persons purchasing mileage books. Eschner *v.* Penn. R. R. (1910) 18 Int. Com. Rep. 60.

for the public convenience, the need must be urgent;[12] and the dissenting judge could not find that the trivial order of the Georgia commission was based on any such emergency.[13] The ultimate object of regulation being to secure efficient service, since irksome rulings by commissions may cause the railroads to discontinue altogether the sale of reduced rate tickets, it is submitted that the power over the incidents of special contracts of transportation should be vested only in that body which may initiate them.

[12]Freund, Police Power, § 398, regards "public convenience" as, at once, the least specific and the least convincing justification of an exercise of the police power. Peckham, J., in Lake Shore & M. S. Ry. *v.* Smith, *supra*, p. 692, demonstrates its uncertain character when he describes its scope in terms of negation.

[13]*Cf.* Platt *v.* Lecocq (C. C. A. 1907) 158 Fed. 723, in which the court upheld certain reasonable regulations of an express company and criticized interference by a commission where the gain in "convenience" was trivial. Alsop *v.* Southern Express Co. (1889) 104 N. C. 278, although apparently inconsistent, is reconciled in a note to the former case in 15 L. R. A. [N. S.] 558.